

MODEL LETTER
NOTICE OF NON-COMPLIANCE WITH PAYMENT PROVISION
OF [CONSENT DECREE/SETTLEMENT/AGREEMENT]

Certified Mail - Return Receipt Requested [Date]

[Name], [Title]
 [Address]

RE: [_____ Site ("Site"), [Location]:
 [Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. ____]

Dear [_____]:

[I. For failure to pay a sum certain due on a date certain e.g., past cost payment:]

A. Failure to Make Required Payment

With this letter, EPA is notifying you of [Respondent(s)/Settling Defendant(s)] [insert name(s')] noncompliance with the above-referenced [Administrative Order/Consent Decree/Agreement] for failure to pay [insert dollar amount of overdue payment, e.g., "\$100,000"] by the due date of [date] as required by Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement]. Paragraph __ states:

[Quote payment language of [Administrative Order/Consent Decree/Agreement]

[If appropriate, include discussion of why payment is now overdue based on the above language.]

B. Interest is Accruing on the Unpaid Amount

Interest is accruing on the unpaid amount in accordance with Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement], from [date] at [insert applicable interest rate]. As of the date of this letter, interest has accrued in the amount of \$ _____. Paragraph __ states:

¹ The Region should tailor this model to the specific circumstances of the case.

[Quote interest language of [Administrative Order/Consent Decree/Agreement], including obligation to pay, interest rate and definition, if any.]

C. Stipulated Penalties²

In accordance with Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement], stipulated penalties are accruing in the amount of \$___ per day from the day after the payment was due through the date full payment is made. As of the date of this letter, the amount of stipulated penalties owed is \$___. Paragraph __ states:

[Quote applicable stipulated penalty language of the [Administrative Order/Consent Decree/ Agreement]

[II. For failure to pay a future response cost bill and properly invoke dispute resolution:]

A. Failure to Pay “Future Response Costs”³ or Properly Invoke Dispute Resolution

With this letter, EPA is notifying you of [Respondent(s)/Settling Defendant(s)][insert name(s)] noncompliance with the above-referenced [Administrative Order/Consent Decree/Agreement] for failure to: (1) pay EPA's Future Response Costs demanded by EPA’s bill dated ____, or (2) properly invoke dispute resolution over some or all of the Future Response Costs demanded, within [insert number] days of [the date of the demand/the date of receipt of the demand], as provided by Section, Paragraph __ of the [Administrative Order/Consent Decree/Settlement. As to Future response Costs, paragraph __ states:

[Quote future response cost payment language (include any relevant dispute resolution language and, if applicable, note escrow requirement) of [Administrative Order/Consent Decree/Agreement]

Specifically, the [Respondent(s)/Settling Defendant(s)] has/have not paid \$___, nor has/have it/they notified EPA that any disputed amounts have been deposited into an interest-bearing escrow account as required by Paragraph __.

² [If the document has no applicable stipulated penalty provision, substitute, “In addition, the [Respondent(s)/Settling Defendant(s)] may be subject to civil penalties from the day after the payment was due through the date that payment is made as a result of their noncompliance.”]

³ To ensure that some costs are not inadvertently excluded, use the specific term in the [Administrative Order/Consent Decree/Agreement]. For example, if “future response costs” is what the settling party agreed to pay, then use that term when referring to the payment and not the term “oversight costs.”

B. Interest is Accruing on the Unpaid Amount

Interest is accruing on the unpaid amount in accordance with Section ___, Paragraph ___ of the [Administrative Order/Consent Decree/Agreement], from [date] at [insert applicable interest rate]. As of the date of this letter, interest has accrued in the amount of \$_____. Paragraph ___ states:

[Quote interest language of [Administrative Order/Consent Decree/Agreement], including obligation to pay, interest rate and definition, if any.]

C. Stipulated Penalties⁴

In accordance with Section ___, Paragraph ___ of the [Administrative Order/Consent Decree/Agreement], stipulated penalties are accruing in the amount of \$___ per day from the day after the payment was due [or required to be deposited into an escrow account] through the date full payment is made [or deposited into an escrow account]. As of the date of this letter, the amount of stipulated penalties owed is \$____. Paragraph ___ states:

[Quote applicable stipulated penalty language of the [Administrative Order/Consent Decree/Agreement]]

[For all cases of failure to pay:]

D. Failure to Pay Will Result in this Claim Being Referred to the United States Department of Justice for Collection

Payment is due immediately. If the payment amount identified in this letter, including interest [and stipulated/civil penalties] is not paid within thirty (30) days after the date of this Notice, this debt will be referred to the Department of Justice for enforcement and collection. No additional EPA notice will be sent. The referral will seek payment of the amount due as provided in the [Administrative Order/Consent Decree/Agreement/Future Response Cost bill of [insert date]], plus accrued interest, [stipulated and/or civil penalties,] and enforcement costs, including attorneys' fees, as appropriate.

The manner and method of payment is set forth in paragraph ___ of the [Administrative Order/Consent Decree/Agreement].

[Quote applicable language from the [Administrative Order/Consent Decree/

⁴ [If the document has no applicable stipulated penalty provision, substitute, "In addition, the [Respondent(s)/Settling Defendant(s)] may be subject to civil penalties from the day after the payment was due through the date that payment is made as a result of their noncompliance."]

Agreement]

If you have any questions or wish to discuss this matter, or need to make further arrangements, please contact [name] [telephone number]. Please note, unless otherwise advised in writing by EPA, any communications with EPA will not relieve you of your obligation to make the required timely payment as provided in this letter.

Sincerely,

[Name]

[Title]

[Office]

cc: [Financial Management Officer, U.S. EPA, Region __]

[Assistant ORC/Legal Enforcement Staff]

[DOJ Assistant Section Chief]

[Cost recovery/Superfund program staff]